

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

THOMAS F. WEST, and
DIANA M. WEST,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. CIV-15-058-Raw

ORDER & OPINION

Before the court is Plaintiffs' motion to strike Defendant's twenty-six affirmative defenses [Docket No. 10]. Federal Rule of Civil Procedure 8 provides in pertinent part that a defendant must "state in short and plain terms its defenses to each claim asserted against it," and that a defendant "may state as many separate claims and defenses as it has, regardless of consistency." Fed. R. Civ. P. 8(b)(1)(A), 8(c)(1) and 8(d)(3).

Pursuant to Rule 12(f), the court may strike defenses, but motions to strike defenses "are disfavored and infrequently granted." Vincent v. Lindsey Management Co., Inc., No. 12-CV-210-JED-PJC, 2013 WL 6732661 at *4 (N.D. Okla. Dec. 19, 2013) (citing United States v. Hardage, 116 F.R.D. 460, 463 (W.D. Okla. 1987)). As Defendant quotes and the Northern District of Illinois aptly noted, the reason for this is that "the very possibility of waiver makes it important (and certainly prudent) to plead all appropriate affirmative defenses, and "the cautious pleader is fully justified in setting up as affirmative defenses anything that might possibly fall into that category, even though that approach may lead to pleading matters as affirmative

defenses that could have been set forth in simple denials. Bobbitt v. Victorian House, Inc., 532 F.Supp. 734, 736 (N.D. Ill. 1982).

To succeed in their motion, Plaintiffs would have to demonstrate that they would “be prejudiced significantly if the attacked allegations are left in the pleadings.” Hardage, 116 F.R.D. at 463. Plaintiffs have not demonstrated any prejudice. Accordingly, the motion to strike affirmative defenses [Docket No. 10] is hereby DENIED.

IT IS SO ORDERED this 11th day of September, 2015.



THE HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA